

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 561 of 1997

in

SPECIAL CIVIL APPLICATION No 2846 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

KESHAVBHAI CHHABABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS KJ BRAHMBHATT for appellant
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 01/09/97

ORAL JUDGEMENT (Per;Thakker.J)

This appeal is filed against an order passed by the learned single Judge in Special Civil Application No.2846 of 1997 dt. April 17,1997.

2. The appellant is the original petitioner. The case of the appellant was that he disposed of land bearing survey no. 242/6=1 and 242/3=1 admeasuring about 2741 sq.mtrs. by a registered sale deed of February 6,1976. The Urban Land(Ceiling & Regulation) Act 1976 (hereinafter referred to as 'the Act') came into force on February 17,1976. It was asserted by the appellants that the appellant's HUF was holding land in the capacity of HUF. A form was filled in by the Karta of HUF before the Competent Authority in accordance with the provisions of the Act. The Competent Authority held that there was no excess land held by the appellant. That order was passed on April 6,1985. Proceedings were then reopened in respect of land bearing S.No. 340/1+2 for which exemption was granted under Section 20 of the Act. The exemption however, came to be withdrawn on April 3,1986. The land thus became vacant and surplus which was liable to be dealt with under ULC Act. Respondent no.1-State issued a notice under Section 34 of the Act on July 27,1987 as to why proceedings should not be initiated in respect of land which was vacant land. The parties were heard and finally an order was passed by which the land was declared as surplus land.

3. So far as surplus land was concerned , the appellant had no grievance against that part of the order and a statement to that effect was made before the learned single Judge also. A grievance was, however made that the land in possession of the appellant could not have been held to be surplus land and he could not have been deprived of the possession of the said land but the land in possession of the purchaser, respondents 3-6 ought to have been declared as surplus.

4. Looking to the record, it clearly appears that the land was declared as surplus land and the appellant kept the purchaser in dark and he did not disclose the fact that the land was declared as surplus. In these circumstances when the question arose for exercise of option and choice by the holder, the authorities held that the land which was sold by the appellant could not have been included in surplus land and the purchasers who were bonafide purchasers for value without notice and concealing true and correct facts and by keeping the purchasers in dark the appellant had sold the land to them, could not be deprived of legitimate rights which accrued in their favour.

5. The learned single Judge after considering the facts and attendant circumstances in the light of the affidavit in reply on behalf of the purchaser, respondents nos. 3 to 6 held that if the contention of the appellant (petitioner) would be upheld, the respondents who had purchased the land, without there being any knowledge on their part, that land was declared as surplus land and was required to be dealt with under the provision of the Act would be prejudicially affected and hence the learned single Judge did not uphold the argument advanced on behalf of the appellant.

The learned single Judge stated;

" Mr. Patel , for the caveators, has, rightly, contended that since the petitioner has no grievance about the merit of the order qua the questions required to be decided under the Act, he has no bona fides to challenge this order. The only intention to challenge the order as can be pulled out from the record is to make the Court as an instrument for practicing fraud and deprive the respondents nos. 3 to 6 of their legitimate holding. As per admitted facts, the petitioner has no interest in land bearing Sy. No. 242 on the one hand and Survey No. 340 on the other hand, as both the lands have already been disposed of to third parties. Land bearing Sy.No.242/6+1 and Sy.No. 242/3+1 was sold by him on 6.2.1976, i.e. after the Appointed Day (26th of January 1976) and before the commencement of the Act i.e. , 7.2.1976, whereas land bearing Sy.No. 340/1+4 has been sold by the petitioner to the present respondent nos 3 to 6 by five different registered sale deeds after obtaining No Objection Certificate from the Competent Authority, as contemplated under Section 26(2) of the Act. On facts, the Competent Authority has held that the sale made in favour of the present respondents nos 3 to 6 is legal and permissible under the Act. Consequently, the land sold to respondents nos 3 to 6 cannot be termed as holding the petitioner and declared as excess land. As against that, admittedly, the sale of property bearing Sy. No. 242/6+1 and Sy. No. 242/3+1 is against the provisions of law and is illegal and the land forming part of such sale shall be deemed to be the holding of the

petitioner available for declaring excess land, in my view, the Competent Authority has, rightly, held so and exercised the jurisdiction.

6. Ms. V.P.Shah Sr. counsel for Ms. Brahmbhatt strenuously argued that when the law confers a right on the party of choice of the land, the appellant cannot be denied the said right. She further submitted that it is for the appellant to ask the authorities as to which land should be declared as surplus and possession of that land alone can be taken by the authorities. In our opinion the learned Single Judge was right in negating the said contention inasmuch as the appellant in our opinion wanted to take undue advantage of his own wrong. Had the appellant not kept the respondents nos. 3 to 6 in dark and had all the facts been brought to their notice they would never have purchased the land because there was no alienable title in favour of the appellant which could be transferred in favour of respondents nos. 3 to 6. When a representation was made by the appellant that he was the owner of the land and that he had title which could be transferred in favour of the purchasers, a transaction took place under a registered sale deed. Looking to the record it is clear that even prior to the transaction in favour of respondents nos. 3 to 6, the appellant had sold land to some other persons also. In connection with those transactions also, two Special Civil Applications are pending. In fact, when this matter was being argued M/s. S.B.Vakil and P.M.Thakkar learned counsel wanted to intervene in the matter requesting the court that the decision in this Letters Patent Appeal and/or observations made by us in this matter may affect one way or the other to their clients. We have not allowed them to intervene but at the same time, we told them that we would be making it clear in our order that we are deciding this Letters Patent Appeal on its own merits and our observations would be limited to this case alone.

7. We may clarify that whatever observations we have made in this LPA are only for deciding this LPA. As and when other matters will be taken up for hearing, they will be decided strictly in accordance with law and on their own merits.

8. So far as the present LPA is concerned, in our opinion, no infirmity can be said to have been found in the order passed by the learned single Judge. On the contrary in our view the order passed by the learned Single Judge is in furtherance of justice and equity. The equitable order is passed by the learned single Judge.

For the reasons stated above, we do not see any reason to interfere with the order passed by the learned single Judge. The Letters Patent Appeal deserves to be dismissed and accordingly is dismissed. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)